

RECEIVED
DROP BOX
JOSEPH R. ESQUIVEL
LORI ESQUIVEL fka LORI HERDA
6940 Surrey Ct.
Las Vegas, Nevada 89145
(702) 856-0609

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U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

DEBTORS IN PROPER PERSON

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In RE:

JOSEPH R. ESQUIVEL, JR. and
LORI ESQUIVEL,

Debtors

)
) CASE No.: BK-S-09BK-29326-BAM
)
) Date 10/26/2010
) Time: 2:30 p.m.
)
) Chapter 7
)

**DEBTORS' OPPOSITION TO OPPOSITION FOR RELIEF FROM STAY
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

COMES NOW, JOSEPH R. ESQUIVEL, JR. and LORI ESQUIVEL fka LORI HERDA,
Debtors in Proper Person, and submit the following Objection to Secured Creditor Objection to
Motion to Lift Stay

Introduction

The Alleged Secured Creditor BAC HOME LOAN SERVICING, L.P., (herein after "Secured
Creditor") has struggled for the past 10 months to show standing and produce evidence of
standing even after being subpoenaed. They are attempting to lure the court into believing that 1
day prior to the date given to them by the Honorable judge Bruce Markell that they have
suddenly proof of standing, however it is not what was asked for and Secured Creditor is not the
party claiming to have this proof. A third party is claiming proof of ownership of note.

1. Secured Creditor was obligated to file a B-10 form. It would make sense that if one
was a secured party that this form would be filled out.
2. It is correct that the Clark County Recorder's Office is where All assignments should

1 be recorded. However that is not the case in this matter. All assignments were not
2 recorded.

3 3. Secured Creditor has only supplied the courts with what the Secured Creditor deems
4 relevant in the way of assignments and records of transfers and not a complete record.
5 The Declaration that the Secured Creditor has supplied is without merit as the certificate
6 that was used is for a form that used when they proffer to the NV SUPREME COURT
7 to get a certificate of sale when there is no opposition. There is no Section (d) in
8 A.B.149, Rule 5, SECTION 7 (d) There is no chain of title showing how this party came
9 into possession and what is relationship to Secured Creditor. One can be a holder but that
10 does not make him a holder in due course. That is like saying that Federal Express is
11 Federal.

12 4. Secured Creditor is a lender servicing company and not a creditor. Debtor has asked
13 for countless documents that would shed light on a lot of things however Secured
14 Creditor has refused knowing that the truth would come out.

15 5. The R.E.S.P.A and T.I.L.A. are claims with merit and that their claim that it is without
16 merit is their admission that they are not the lender. The letter is a qualified written
17 request in compliance with and under the Real Estate Settlement Procedures Act, 12
18 U.S.C. Section 25605 (e) and Regulation X at 24 C.F.R.3500 and The Gramm Leach
19 Billy Act.

20 6. By refusing to provide the documents that have been asked for in the R.E.S.P.A. and
21 T.I.L.A. that are certified true and correct, (by the Trustee of this court) in their unlimited
22 commercial liability, while Under Oath and for the Official Record Under Penalty of
23 Perjury this shows that Secured Creditor is hiding documents that they do not want out in
24 public.

25 RELEVANT FACTS

26 7. On or about May 2005, debtor purchased the property commonly known as 6940
Surrey Ct, Las Vegas NV 89145 and legally know described as: LOT 6 IN BLOCK 12
OF CHARLESTON RAINBOW UNIT 7B, AS SHOWN BY MAP THEREOF ON FILE
IN BOOK 13 OF PLATS, PAGE 51 IN THE OFFICE OF THE ASSESSOR'S PARCEL
NO: 138-34-610-006

1 8. On or about Sept 30,2009 Debtors were going through documents sent to and also
 2 recorded with Clark County Recorder Office and noticed irregularities with the dates on
 3 documents. Notice of Default /Elect to Sell, Substitution of Trustee and the Corporation
 4 Assignment of Deed of Trust.

5 a. Notice of Default – executed 9/2/2009 and recorded 9/3/2009 grants
 6 Recontrust as Trustee by power of MERS. *See Exhibit "1 attached hereto"*.

7 b. Substitution of Trustee was not executed until 9/8/2009 and recorded
 8 9/14/2009. *See Exhibit "2 attached hereto"*. The parties executing the Notice of

Default had NO LEGAL standing as of the recording date 9/3/2009.

9 c. Corporate Assignment of Deed of Trust was composed 9/2/2009,
 10 executed 9/8/2009/ and recorded 9/14/2009. *See Exhibit "3"*. This assigns
 11 the Deed of Trust from MERS to BAC Home Loan Servicing LP fka
 12 Countrywide Home Loan Servicing LP.

13 9. Secured creditor is a SERVICER and as such cannot own and hold the note.

14 10. The Declaration that Secured Creditor has produced is from a third party. There is no
 15 chain of title showing how this party came into possession and what is relationship to
 16 Secured Creditor party. It does not check the box showing that it also has the original
 deed of trust. *See Exhibit 4 attached hereto*

17 10. On July 19,2010 Debtors hired Housing Mortgage Consultants , Inc for a
 18 Securitization Examination Analysis of the account# 971353374 and to examine the
 19 documents that debtors were able to produce along with any and all other documents and
 relevant information that they could find regarding the account. *See Exhibit 4 attached*

20 *hereto*

21 11. Debtors have amended their petition as such to reflect finding Alleged Secured
 22 Creditor not as Secured Creditor but as a Unsecured Creditor and have not found the
 23 Secured Creditor to have standing.

24 12. The debtor Promissory Note that was sold to an Investor was done by use of the
 Borrower's identity and obligation without permission.

25 13. Debtors hired a second independent Forensic Auditor to confirm the findings of the
 26 first forensic auditor on 10/21/2010 . *See Exhibit 5 attached hereto*

LEGAL ANALYSIS

1.Secured Creditor has no Standing

Persuant to 26 U.S.C 6323- Sec 6323 the debtors believe and thereon allege the Secured creditor does not have standing.

Secured Creditor has entered into court a copy of the alleged original Promissory Note however there are no endorsements other than an endorsement in blank from Countrywide Home Loans Inc. thus discharging the obligor from the oblige.

Title 12 1813 (L) (1) states that when you deposit a promissory note it becomes cash thus the obligation to Countrywide Home Loans Inc, has been satisfied.

MERS does not have authority to assign beneficial interest in a note that it does not own.

In Re :Joshua and Stephanie Mitchell, Case 07-16226-LBR, U.S. Bankruptcy Nevada, entered march 31, 2009

Judge Linda B. Riegle Stated

MERS does not have standing merely because it is the alleged beneficiary under the Deed of Trust. It is not a beneficiary and , in an event, the mere fact that an entity is named beneficiary of a Deed of Trustin insufficient to enforce the obligation

Conclusion

Secured Creditor has come into court with unclean hands. Attorneys do not go into court and make claims without having of the Elements required by law.

Debtors were improperly served and has not had enough time to properly put forth more opposition as they had wished.

The Debtors have paid out over \$ 174,000 of their for a property that is worth only \$ 126,000 and that the Secured Creditor wants for free. They have lost nothing and want everything .

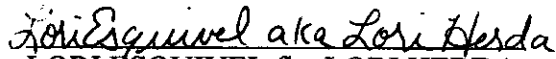
1 WHEREFORE, Debtor prays judgment as follows:

- 2 (1) That the Court Change Secured Creditors Status for BAC to a Unsecured Creditor
3 Status for BAC in its entirety and its claim discharged as such with the other unsecured claims
4 with Prejudice.
- 5 (2) That Credit report be corrected to show account paid in full and satisfactorily;
- 6 (3) That property be reconveyed eliminating any unproven claim and or lien;
- 7 (4) That Public Record in Clark County be corrected

8 Dated this 22nd day of October , 2010

9 By:

10 
11 JOSEPH R. ESQUIVEL, JR., PRO SE
DEBTOR

12 
13 LORI ESQUIVEL fka LORI HERDA,
14 PRO SE DEBTOR

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EXHIBIT “1”

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, TX2-985-07-03
Richardson, TX 75082

Attn:
TS No. 09-0131186
Title Order No. 090626360NVGTI

APN No. 138-34-610-006

NEVADA IMPORTANT NOTICE
NOTICE OF DEFAULT/ELECTION TO SELL UNDER DEED OF TRUST

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, N.A., is the duly appointed Trustee under a Deed of Trust dated 05/03/2005, executed by LORI HERDA, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as beneficiary recorded 05/25/2005, as Instrument No. 0003792 (or Book 20050525, Page) of Official Records in the Office of the County Recorder of Clark County, Nevada. Said obligation including ONE NOTE FOR THE ORIGINAL sum of \$205,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 06/01/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES, PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY, INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 06/01/2035 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:
BAC Home Loans Servicing, LP, c/o RECONTRUST COMPANY, 2380 Performance
Dr., TX2-985-07-03, Richardson, TX 75082, PHONE: (800) 281-8219. Should you wish to
discuss possible options for loan modification, you may contact the Home Retention Division at
1-800-669-6650. If you meet the requirements of Section NRS 107.085, you may request
mediation in accordance with the enclosed Election/Waiver of Mediation Form and instructions.
You may also contact the Nevada Fair Housing Center at 1-702-731-6095 or the Legal Aid
Center at 1-702-386-1070 for assistance.

RECONTRUST COMPANY, as agent for the Beneficiary
By: Fidelity National Default Solutions, as Agent

By: LSI Title Agency, Inc., an Illinois Corporation, as Agent
Anselmo Pagkaliwangan

State of: California
County of: Orange

Connie L. Borrás

On 9.2.2009, before me, _____, Notary
Public, personally appeared Anselmo Pagkaliwangan, who proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within instrument and acknowledged to me
that he executed the same in his authorized capacity and that by his signature on the instrument the
person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Connie L. Borrás (Seal)
Connie L. Borrás

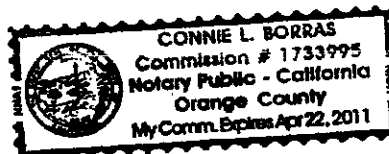


EXHIBIT “2”

RECORDING REQUESTED BY:

RECONTRUST COMPANY

AND WHEN RECORDED MAIL DOCUMENT TO:

RECONTRUST COMPANY

2380 Performance Dr, TX2-985-07-03

Richardson, TX 75082

ATTN: Dominic Heme

TS No. 09-0131186

138-34-610-006

TSG No. 090626360NVGTI

SUBSTITUTION OF TRUSTEE NEVADA

WHEREAS, LORI HERDA, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY was the original Trustor, CTC REAL ESTATE SERVICES was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 05/03/2005 recorded on 05/25/2005 as Instrument No. 0003792 in Book 20050525 Page of Official Records of Clark County, Nevada;

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW THEREFORE, the undersigned hereby substitutes RECONTRUST COMPANY, N.A., WHOSE ADDRESS IS: 2380 Performance Dr, TX2-985-07-03, Richardson, TX 75082, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING LP

BY: Angela Nava
Angela Nava, Assistant Secretary

State of: Texas
County of: Dallas

On 9-8-09 before me ANGELA SERATO, personally appeared
Angela Nava Assistant Secretary, know to me (or proved to me on the
oath of _____ or through _____) to be the person whose name is
subscribed to the foregoing instrument and acknowledged to me that he/she executed the same
for the purposes and consideration therein expressed.
Witness my hand and official seal.

Angela Serato
Notary Public's Signature



EXHIBIT “3”

RECORDING REQUESTED BY:
RECONTRUST COMPANY, N.A.
AND WHEN RECORDED MAIL DOCUMENT TO:
BAC Home Loans Servicing, LP
400 COUNTRYWIDE WAY SV-35
SIMI VALLEY, CA 93065

138-34-610-006

TS No. 09-0131186

TITLE ORDER#: 090626360NVGTI

CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 05/03/2005,
EXECUTED BY: LORI HERDA, A MARRIED WOMAN AS HER SOLE AND SEPARATE
PROPERTY, TRUSTOR: TO CTC REAL ESTATE SERVICES, TRUSTEE AND RECORDED AS
INSTRUMENT NO. 0003792 ON 05/25/2005, IN BOOK 20050525, OF OFFICIAL RECORDS IN THE
COUNTY RECORDER'S OFFICE OF CLARK COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE
MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS
ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: September 02, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC.

State of: Texas
County of: Dallas

BY: Angela Nava
Angela Nava, Assistant Secretary

On 9-8-09 before me ANGELA SERATO, personally appeared
_____, know to me (or proved to me on the oath of _____ or through
_____) to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.
Witness my hand and official seal.

Angela Serato
Notary Public's Signature



Instrument # 200909140003883 Page: 2 End of Document

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING LP

BY: Angela Nava, Assistant Secretary

State of: Texas
County of: Dallas

On 9-8-09 before me ANGELA SERATO, personally appeared
Angela Nava Assistant Secretary, know to me (or proved to me on the
oath of Angela Nava or through Angela Nava) to be the person whose name is
subscribed to the foregoing instrument and acknowledged to me that he/she executed the same
for the purposes and consideration therein expressed.
Witness my hand and official seal.

Angela Serato
Notary Public's Signature



EXHIBIT “4”

**CERTIFICATION OF DOCUMENTS PURSUANT TO NV A. B. 149 AND AMENDED
FORECLOSURE MEDIATION RULES, RULE 5, SECTION 7(D)**

I, Thomas Huynh, declare:

1. I am a[n] MLO-Servicing Team Manager(TITLE) employed by:

☒ ReconTrust Company, N.A.

☐ Bank of America

☐ _____

At 1800 Tapo Canyon Road, Simi Valley, CA and am authorized to execute this certification of documents on its behalf. I have personal knowledge of the facts contained in this declaration and, if called as a witness, could and would competently testify to them.

2. In my capacity as an employee of the above-referenced company, I am in actual possession of the

☒ original promissory note

☐ original deed of trust

☐ each assignment of the promissory note and/or deed of trust

at issue in this matter, designated in our records as Loan No. 97135374, regarding property address 6940 SURREY COURT, LAS VEGAS, NV, 89145 and borrower(s) LORI HERDA.

3. The attached copies of the above-referenced documents are true and correct copies of the original promissory note, deed of trust, and each assignment of the promissory note and/or deed of trust in my actual possession as an employee of ReconTrust Company, N.A.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct and that this declaration is executed on this 18th day of October, 2010, at Simi Valley, California.



Thomas Huynh, DECLARANT

STATE OF CALIFORNIA

COUNTY OF VENTURA

On October 18, 2010 before me, Laurie Meder, Notary Public, personally appeared Thomas Huynh, Servicing Team manager, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public

